companies should have an opportunity to enter the interLATA business as soon as they accommodate CLEC entry in accordance with the competitive checklist. Congress did not want to make Bell companies and long distance customers wait until some particular amount of local competition emerges. The interexchange carriers' view that the public interest test of section 271(d) may be used to nullify the carefully crafted guidelines of section 271(c) must be rejected as a matter of law, for the public interest test always "take[s] meaning from the purposes of the regulatory legislation" at issue.[47]

The long distance incumbents also offer various theories aimed at showing that new entry into interLATA services might in some situations have the opposite of its natural beneficial effect. These theories rely on false premises, such as assumptions that long distance carriers compete vigorously and that oversight by this Commission and the FCC provide no meaningful protection. Beyond this, however, the interexchange carriers' witnesses never test their theories against actual market realities, such as the current state of competition in Connecticut and the New Jersey corridors, as well as healthy Bell company participation in markets such as cellular and information services. In short, the interexchange carriers' abstract theories are no match for the concrete evidence that Southwestern Bell's entry will *benefit* the public.

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[47] *NAACP v. FPC*, 425 U.S. 662, 669 (1976); *see also United States Nat'l Bank v. Independent Ins. Agents*, 113 S. Ct. 2173, 2182 (1993) (statutory interpretation must take account of "the provisions of the whole law, and . . . its object and policy") (internal quotation omitted).

1. AT&T argues through the testimony of John Mayo that "the market for interLATA services in Oklahoma is effectively competitive." AT&T's Mayo ¶ 34. Congress disagreed, deciding the public would benefit from an infusion of Bell company competition into long distance.[48] That Congress was correct becomes clear when one examines Mayo's arguments. Mayo cites: (1) the additional competition that followed from breaking up the Bell System thirteen years ago, *id.* ¶¶ 20-23, 31; (2) the alleged "ease of entry and expansion within the interLATA interexchange industry", *id.* ¶¶ 24-30; and (3) demand factors, such as the importance of a relatively small number of large customers in the market, *id.* ¶¶ 32-34.

Whether a market dominated by AT&T, MCI, and Sprint is more competitive than the Bell System's old monopoly is beside the point, for the interLATA market — and particularly the provision of service to low-volume customers — will clearly be more competitive following Bell company in-region entry. Whatever competitive burst followed from divestiture has long since dissipated, as indicated by parallel rate hikes and climbing price/cost margins since 1994. *See* Kahn Aff. ¶¶ 10-22.

Mayo observes that AT&T has lost market share since the early 1980s. AT&T's Mayo ¶ 31. AT&T's customers have gone overwhelmingly to just two carriers — MCI and Sprint — so that these three carriers now control nearly the same percentage of interstate, interLATA traffic as the old Bell System did. *See* Schmalensee Aff. ¶ 8. Just as important,

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[48] *Local Interconnection Order* at ¶ 3 (noting that "principal goals . . . of the 1996 Act" included "promoting increased competition in . . . the long distance services market"); 141 Cong. Rec. S686-87 (Feb. 1, 1996) (Statement of Sen. Pressler) (1996 Act "will lower prices on long-distance calls through competition").

MCI and Sprint no longer are taking market share from AT&T. This suggests that whatever rivalry there was between the three major carriers has eased as MCI and Sprint eschew efforts to gain market share in favor of following AT&T's price hikes. *See id.* ¶¶ 9-14. The three carriers have all accepted a very gradual erosion of their collective market share in exchange for high current profits. Market shares thus confirm that AT&T's monopoly has given way to oligopoly, not robust competition.

Mayo explains that the interLATA market is characterized by "skewed" demand, whereby there are a relatively small number of high-volume (business) users and a large number of low-volume (residential) users. AT&T's Mayo ¶ 32. Mayo also observes there is a fair amount of customer "churn" between AT&T, MCI, and Sprint. *Id.* ¶ 33. These facts fit the observed lack of interLATA competition in Oklahoma. As explained in Southwestern Bell's draft brief and the draft supporting materials, the Big Three carriers target their price discounts and promotions at the relatively small number of customers who buy most residential interLATA services. As their rates and profit margins climb, it also becomes profitable for AT&T, MCI, and Sprint to buy more and more advertising in an effort to attract these high-volume customers, thus increasing customer churn. Low-volume customers — including about half of all AT&T residential customers, who have bills under $10 per month — are ignored because they are less profitable. Even if they switch carriers, these customers realize little or no savings, for they still pay basic rates that are essentially the same across the

Finally, Mayo relies on two studies of market behavior during the 1980s and early 1990s — *before* recent price increases, *see* Draft Br. at 53-55 — for the proposition that no single interexchange carrier holds market power. AT&T's Mayo ¶¶ 36-37.[49] The FCC has noted that evidence about unilateral market power says nothing about whether AT&T, MCI, and Sprint are *jointly* engaged in non-competitive pricing. *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271, 3314-15 (1995) (emphasis added). Mayo's studies thus do not even respond to Southwestern Bell's evidence that its entry through section 271 would address the current lack of competition between the three major incumbents. Nor do these studies, which looked only at rates aggregated across different groups of customers, speak to the status of competition to serve low-volume residential customers.

To address Southwestern Bell's actual evidence, Mayo relies upon yet another theoretical argument. "[T]he structural characteristics of the interexchange market," he says, "make it infertile ground for tacit collusion among carriers." AT&T's Mayo ¶ 44. As a preliminary matter, this conclusion contradicts Mayo's discussion elsewhere of the conditions for price leadership and tacit collusion — conditions which describe the interexchange

[49] As Alfred Kahn and Timothy Tardiff explained in their draft affidavit filed by Southwestern Bell on February 20, even the pre-1994 price decreases were "more than fully 'explained' by FCC-mandated decreases in the prices that the long-distance carriers pay to the local exchange carriers for access to their networks." Kahn Aff. ¶ 11.

business.[50] Mayo's current conclusion also rests on an assumption that the interLATA market, with its sunk costs and handful of dominant firms, "is characterized by low barriers to entry." *Id.*[51] Even more importantly, however, Mayo nowhere ties his theories to the prices AT&T, MCI, and Sprint *actually charge in the marketplace*. These prices firmly lay to rest his hypotheses.

Mayo concedes, as he must, that "[i]n recent years, the tariffed price of AT&T basic MTS has risen." *Id.* ¶ 46.[52] He could have made the same observation for MCI or Sprint. Mayo further admits that the long distance industry is characterized by "observed 'price leadership,'" whereby the major carriers' rates move upward together in lockstep. *Id.* ¶ 54; *see* Draft Br. at 53-55. That leaves Mayo weakly to argue, again as a matter of economic theory, that follow-the-leader pricing is not *necessarily* inconsistent with a competitive market. AT&T's Mayo ¶¶ 51-54. Mayo never addresses the overwhelming evidence,

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[50] David Kaserman & John Mayo, *Government and Business: The Economics of Antitrust and Regulation* at 200-03 (1995) ("When only a few firms populate an industry, they must recognize that the industry structure causes interdependent pricing behavior.").

[51] It is remarkable that AT&T and MCI stress entry by tiny resellers with no established brand name or customer base as showing healthy competition in *long distance*, given their own insistence that resale — even by such giants as AT&T — does basically nothing to further competition in *local* markets. *Compare* AT&T/MCI's Warren-Boulton ¶¶ 41-43 (resale is not enough to lead to effective local competition), *with* AT&T's Mayo ¶ 21 (singing praises of long distance resale competition).

[52] In a footnote, Mayo claims that AT&T's average revenue per minute ("ARPM") fell between 1991 and 1995. This ignores AT&T's two price increases in 1996, *see* Draft Br. At 54-55, and lumps low-volume customers together with high-volume ones. Indeed, through averaging, ARPM gives priority to high-volume customers.

discussed in Southwestern Bell's draft brief and the exhibits thereto, that lockstep price increases in long distance have occurred despite steadily falling access and network costs, and have produced rising profit margins. This record of parallel price increases when costs are falling can only be explained as a failure of competition. *See, e.g.*, Kahn Aff. ¶¶ 11-22; WEFA Report at 9-11; MacAvoy, *The Failure of Antitrust Regulation and Regulation to Establish Competition in Long-Distance Telephone Services* 105-174 (1996).

Mayo never mentions costs, except to recite AT&T's position that it serves customers with bills below $3 per month at a loss. *Id.* ¶ 47. This does not explain the major carriers' pricing for customers with bills between $3 and $10. *See* Draft Br. at 58-59; Kahn Aff. ¶¶ 21-22. Mayo's only other defense of price increases is the incumbent carriers' old refrain that basic rates are meaningless. AT&T's Mayo ¶¶ 46-50. Basic long distance rates certainly do matter for the hundreds of thousands of Oklahomans who pay them. According to the Yankee Group, for instance, only 38 percent of AT&T households nationwide used a calling plan.[53]

On a related point, an AT&T/MCI witness, Frederick Warren-Boulton, attempts to cast doubt on the exact level of the benefits that will be realized from Southwestern Bell's entry into interLATA services. He questions the WEFA Group's assumption that interLATA rates will fall by about five percent per year during the five years following Southwestern Bell's interLATA entry. AT&T/MCI's Warren-Boulton ¶ 64. Far from being overstated, this estimate is cautious in light of actual experience in Connecticut and New Jersey, where SNET

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[53] Yankee Group, 1996 TAF Survey: Implications for Convergence at Table 307 (Dec. 1996).

and Bell Atlantic, respectively, are now offering rates 17 to 30 percent below AT&T's. *See* Draft Br. at 59-60.

2. The second assumption of the major long distance incumbents is that regulatory oversight "will necessarily be imperfect," and cannot be relied upon to ensure that SWBT does not cross-subsidize the interLATA operations of its separate affiliate or discriminate against rival interexchange carriers with respect to local interconnection.[54] AT&T/MCI's Warren-Boulton ¶ 15. Here, AT&T, MCI, and Sprint offer only the vaguest speculation. They studiously avoid specifics as to how Southwestern Bell might accomplish its misdeeds or what effect they would have on the market. They flatly ignore the recent conclusions of the FCC that its rules are sufficient. And they offer unsupported assertions of alleged wrongdoing by various LECs to counter the history of uniformly beneficial Bell company participation in markets that depend on interconnection with the local exchange network (such as cellular services, paging, the New Jersey "corridors," information services, and customer premises equipment).

AT&T and MCI offer various theories as to sorts of misconduct that might, hypothetically, occur. First, Professor Warren-Boulton argues that Southwestern Bell might have an incentive not to cooperate with competing interexchange carriers in joint research and technical collaboration. *Id.* ¶¶ 16-21. Warren-Boulton never links his theory to any actual

[54] Significantly, none of the smaller interexchange carriers that serve Oklahoma, who presumably would be most vulnerable to any such strategies, have raised these concerns or otherwise opposed Southwestern Bell's entry into interLATA services.

projects, facilities, or services, but presumably he has development of interexchange access arrangements in mind. The FCC rejected the same argument just weeks ago, when MCI put it forward as a supposed basis for blocking the merger of SBC Communications Inc. and Pacific Telesis Group.[55] Moreover, as was fully discussed in Southwestern Bell's draft brief, the "non-cooperation" theory ignores the stringent nondiscrimination safeguards already put into place by the FCC pursuant to 47 U.S.C. § 272, the benchmarks established during over a decade of cooperation between SWBT and interexchange carriers, and SWBT's continuing incentive to provide high-quality access services in order to maximize Southwestern Bell revenues. Draft Br. at 79-80.

AT&T's Mayo speculates that Southwestern Bell might engage in "price squeezes." This issue, too, was presented to and rejected by the FCC. In the *PacTel/SBC Order*, the FCC concluded that "an attempted price squeeze is unlikely to be an effective anti-competitive tool" and that "MCI has not shown that they are likely to occur, especially on a competitively significant scale." *PacTel/SBC Order* ¶ 54. This issue is fully addressed in Southwestern Bell's draft brief at pages 74-75.[56]

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[55] Memorandum Opinion and Order, *Applications of Pacific Telesis Group, Transferor, and SBC Communications, Inc., Transferee*, Rep. No. LB-96-32, FCC 97-28 ¶¶ 55-57 & n.107 (rel. Jan. 31, 1997) (rejecting MCI argument that Bell companies will have reduced incentives to cooperate with interexchange carriers, and noting existence of regulatory safeguards) ("*PacTel/SBC Order*").

[56] Mayo also raises the theoretical possibility of monopoly leveraging through a tying or bundling arrangement, without ever suggesting how this bears on Southwestern Bell. AT&T's Mayo ¶ 58. To the extent that Mayo has in mind bundled packages of local and long distance service, SWBT's duty to provide equal access and local services for resale (as

Mayo's cursory arguments about possible price or non-price discrimination are addressed in Southwestern Bell's draft brief at pages 76-79. As the draft brief explains, these theories also have been rejected by the FCC in its *PacTel/SBC Order* and in rulemakings implementing new section 272 of the federal Communications Act.[57] For example, the FCC has found that price discrimination "is relatively easy for us and others to detect, and therefore is unlikely to occur." *PacTel/SBC Order* ¶ 53. The FCC likewise rejected arguments that significant technical discrimination could go undetected:

> [T]he reporting requirements required by the 1996 Act, those required under state law, and those that may be incorporated into interconnection agreements negotiated in good faith between BOCs and competing carriers will collectively minimize the potential for anticompetitive conduct by the BOC and its interexchange operations. . . . [T]hese information disclosures will also facilitate detection of potential violations of the section 272 requirements.

Non-Accounting Safeguards Order ¶ 327.

The interexchange carriers' vague speculation about possible future misdeeds is particularly ironic given MCI's recent observation, in connection with its own planned merger with British Telecom, that regulators must reject the claims of parties who "merely speculate about what could go wrong" when that speculation runs contrary to "a comprehensive

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well as its unbundling duties) eliminate any possibility of competitive harm.

[57] This Commission will not implement, or review Southwestern Bell's compliance with, section 272. AT&T's testimony urging "the Commission to impose additional accounting safeguards" thus should be ignored. AT&T's Crombie ¶ 6. Nor is there any substance to AT&T's claims that Southwestern Bell is in violation of section 272, as explained in Southwestern Bell's draft brief. Draft Br. at 36-47; *see* AT&T's Rutan ¶¶ 60-65 (making allegations).

regulatory program," economic logic, and actual market experience.[58] MCI's caution against crediting self-interested speculation applies with full force here. Congress addressed possible discrimination and cross-subsidy through the structural and non-structural safeguards of section 272. The FCC addressed these same issues in its rulemakings to implement the 1996 Act. Congress and the FCC have responded to any valid concerns raised by the long distance industry concerning Bell company entry. In light of those steps, there simply is no substance to the incumbent carriers' objections.

In that regard, it is notable that none of the interexchange carriers make even a token effort to dispute Southwestern Bell's evidence that entry by the Bell companies and other large LECs into businesses related to local telephone service has benefitted consumers overall, *every time* it has been allowed. Draft Br. at 59-62, 82-87. The most AT&T, MCI, and Sprint can do is dredge up a few instances of *alleged* misconduct, none of which appear to have had any adverse affect on prices or output in any market adjacent to the local exchange.

These incidents actually highlight the comprehensive protections that have been put into place to address Bell company interLATA entry. For instance, AT&T and MCI complain SNET discriminatorily denied AT&T access to its billing services in Connecticut.

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[58] British Telecommunications PLC and MCI Communications Corp., Opposition & Reply at 13, *Merger of MCI Communications Corp. and British Telecommunications plc,* GN Dkt. No. 96-245 (FCC Feb. 24, 1997).

AT&T/MCI's Warren-Boulton ¶¶ 22-23.[59] Yet section 272(c)(1) requires Bell companies such as SWBT to provide unaffiliated carriers any facilities and services they provide to their long distance affiliates, on a nondiscriminatory basis and subject to the joint marketing provisions of section 271(g). *See* Draft Br. at 45 (discussing SWBT's billing and collection services).

Other incidents cited by the long distance carriers indicate regulators' willingness to detect and address possible problems as they arise. For example, AT&T and MCI cite BellSouth's introduction of its MemoryCall voice-messaging service as an example of discriminatory conduct. AT&T/MCI's Warren-Boulton ¶ 31. In 1991, the Georgia PSC found that BellSouth had used improper marketing practices and had discriminated against competing enhanced service providers and ordered a temporary halt to MemoryCall sales.[60] Yet MCI and Sprint, among others, supported BellSouth's successful position before the FCC that the PSC lacked jurisdiction to find a violation where BellSouth had acted in accordance with FCC rules.[61] The FCC later stated that it found the Georgia PSC's finding of improper practices unpersuasive on the merits.[62]

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[59] That AT&T has chosen to terminate its billing arrangements with SWBT and other LECs contradicts Warren-Boulton's claims that access to such billing arrangements is crucial to AT&T's quality of service. AT&T's Warren-Boulton ¶ 23.

[60] *Matter of the Commission's Investigation into Southern Bell Tel. and Tel. Co.'s Provision of MemoryCall Serv.*, 123 P.U.R.4th 83 (Ga. PSC May 21, 1991).

[61] *Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corporation*, 7 FCC Rcd 1619 (1992).

[62] Brief for Respondents, *California v. FCC*, No. 92-70083 (9th Cir. filed July 14, 1993).

AT&T further relies upon *Great Western Directories, Inc. v. Southwestern Bell Telephone Company*, AT&T's Mayo ¶ 63 — a case which has no continuing relevance after the 1996 Act, and, in fact, has been vacated by both the district court and the U.S. Court of Appeals for the Fifth Circuit.[63] The plaintiff in *Great Western* has acknowledged that its claims about directory listings and their pricing have been addressed by the 1996 Act, and that the issues of the case therefore are "unlikely to arise again."[64]

Finally, Mayo cites a California PUC matter in which a preliminary injunction was entered against Pacific Bell, in connection with its routing of Centrex customers' *intraLATA* calls. There was no finding of any violation, and, in fact, MCI's legal theories generally were rejected.[65] Nor could Pacific Bell's alleged wrongdoing have been much of a threat to competition, for the injunction was dissolved after MCI "lost interest in th[e] case."[66]

3. AT&T and MCI make the additional claim that preventing Southwestern Bell from offering one-stop-shopping will ensure a "level playing field" until "meaningful local competition develops." AT&T/MCI's Warren-Boulton ¶ 59. That is exactly wrong. As explained in Southwestern Bell's draft brief, the 1996 Act guarantees all telecommunications

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[63] 63 F.3d 1378 (5th Cir. 1995), *vacated and remanded*, August 21, 1996 (5th Cir.), *dismissed* Aug. 28, 1996 (N.D. Tex).

[64] Joint Motion to Recall the Mandate, Vacate This Court's Opinions and Judgment, and Remand to the District Court, *Great Western v. SWBT*, at 3-4 (July 26, 1996).

[65] *See MCI Telecommunications Corp. v. Pacific Bell*, No. 95-05-020, 1995 Cal. PUC LEXIS 458 at *41-*62 (Cal. PUC Jan. 17, 1995).

[66] *MCI Telecommunications Corp. v. Pacific Bell*, No. 96-05-024, 1996 Cal. PUC LEXIS 747 at *4 (Cal. PUC July 3, 1996).

carriers, including the major long distance carriers, the right to bundle facilities-based or resold local services with interLATA services as soon as Southwestern Bell is freed to enter the interLATA market. The Act even gives interexchange carriers, including AT&T, MCI, and Sprint if they are facilities-based CLECs, a head start. The statute and FCC rules allow them to offer "one-stop-shopping" today, while Southwestern Bell cannot do so. *See* Draft Br. at 64-66.[67]

AT&T argues that the importance of Southwestern Bell's current inability to offer one-stop shopping can be minimized if (1) SWBT prices its billing services so low that interexchange carriers are discouraged from offering customers a single bill of their own and (2) AT&T, MCI, and Sprint choose to enter the local exchange solely on a resale basis, thereby triggering the restriction of section 271(e)(1). AT&T/MCI's Warren-Boulton ¶ 58.[68] The far-fetched possibility of such a scenario hardly answers Southwestern Bell's point that consumers are being denied the benefits of vigorous competition across local and long

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[67] Pacific Bell has alleged that in California, AT&T and MCI currently are bundling resold services with their long distance offerings, in violation of the 1996 Act. PacBell Accuses AT&T, MCI of Violating Act by Bundling Services, *Communications Today*, Mar. 13, 1997.

[68] AT&T already offers customers a single bill for local and long distance service as part of its bundling strategy in California and elsewhere. *See* PacBell Accuses AT&T, MCI of Violating Act by Bundling Services, *Communications Today*, Mar. 13, 1997. AT&T's second condition also is very unlikely to be satisfied. For instance, Sprint's WirelessCo L.P. consortium owns one of the PCS licenses for each of the six Major Trading Areas ("MTAs") in Oklahoma. WirelessCo paid just over $158 million for these six licenses and is investing heavily in PCS facilities, which is particularly significant given Sprint's view that sunk investments by CLECs are an "important indicator of imminent competition in local exchange markets." Sprint's Phelan at 15.

distance markets. Southwestern Bell's entry into interLATA services will free it to boost such competition. This, in turn, will encourage interexchange carriers to respond by entering local markets more vigorously.

CONCLUSION

This Commission should reject the efforts of incumbent carriers to frustrate Congress' design for full competition in long distance as well as local services. It should advise the FCC that Southwestern Bell is qualified for interLATA relief in Oklahoma under section 271(c) and urge the FCC to grant that relief.

Respectfully submitted,

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BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

PUD

APPLICATION OF ERNEST G. JOHNSON, DIRECTOR OF THE PUBLIC UTILITY DIVISION, OKLAHOMA CORPORATION COMMISSION, TO EXPLORE THE REQUIREMENTS OF SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996	)	CAUSE NO. 970000064

REPLY COMMENTS OF BROOKS FIBER COMMUNICATIONS OF OKLAHOMA, INC., AND BROOKS FIBER COMMUNICATIONS OF TULSA, INC.

Brooks Fiber Communications of Oklahoma, Inc., and Brooks Fiber Communications of Tulsa, Inc., (hereinafter collectively referred to as "Brooks") submits the following reply comments in the above-captioned Cause.

The purpose of these reply comments is limited to clarification of two discrepancies between Brooks' Initial Comments and the Statement of Steven E. Turner of AT&T. One item deals with the number of Brooks local exchange customers in Oklahoma, and the other involves Brooks' use (or lack thereof) of number portability.

In his Statement at page 3, Mr. Turner states that at the time Brooks had 7 facilities-based customers in Oklahoma. On the other hand, Brooks Initial Comments indicate that it had 13 business customers in Oklahoma City (6 served by direct on-net connections, 6 served through leased SWBT DS-1 facilities, and 1 served by resold SWBT ISDN), and 7 business customers in Tulsa (2 served by direct on-net connections and 5 served through leased SWBT DS-1 facilities). The discrepancy is the result of the fact that Brooks' Initial Comments contained information updated as of the date of filing, while the information contained in Mr. Turner's Statement reflects information which AT&T obtained from Brooks several weeks prior to the filing of Mr. Turner's Statement. While AT&T had requested to be updated with any more current information as it became available, the data reflected in Brooks' Initial Comments was gathered immediately prior to the filing deadline and was not conveyed to AT&T until after Mr. Turner's Statement was filed. The customer data reflected in Mr. Turner's Statement was accurate at the time it was provided to AT&T, and the customer data contained in Brooks' Initial Comments were accurate at the time of the filing.

Regarding the second matter, involving number portability, Mr. Turner's Statement at page 4 indicates that at that time "Brooks has not ported a single number." On the other hand, at pages 4-5 Brooks' Initial Comments describe early problems with SWBT's implementation of Interim Number Portability (INP). Again, it appears that the

discrepancy results from Brooks' Initial Comments being based on the more current information. As recently as a week to 10 days prior to the filing, Brooks had not ported any numbers. That fact changed during the intervening period prior to the filing with the activation of several customers who desired to retain their existing phone numbers, making INP a necessity.

Respectfully submitted,
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STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

VERIFICATION

I, EDWARD J. CADIEUX, first being duly sworn, states on my oath that I am the Director, Regulatory Affairs - Central Region of Brooks Fiber Properties, Inc. (BFP). I am authorized to act on behalf of Brooks Fiber Communications of Oklahoma, Inc., and Brooks Fiber Communications Tulsa, Inc., (both wholly-owned subsidiaries of BFP) regarding the foregoing Reply Comments. I have read the aforesaid Reply Comments and I am informed and believe that the matters contained therein are true and correct to the best of my knowledge.

Dated: March 24, 1997

Edward J. Cadieux

EDWARD J. CADIEUX

EDWARD J. CADIEUX appeared, and being first duly sworn upon his oath stated that he is the Director, Regulatory Affairs - Central Region of Brooks Fiber Properties, Inc. (BFP) and that he signed the foregoing document as Director, Regulatory Affairs - Central Region of Brooks Fiber Properties, Inc., and the facts contained therein are true and correct according to the best of his knowledge.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal in the aforesaid County and State on the above date.

Dated: March 24, 1997

S E Cundiff-Hannick

NOTARY PUBLIC

My Appointment Expires: Oct 11, 1999

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF APPLICATION OF ERNEST G. JOHNSON, DIRECTOR OF THE PUBILC UTILITY DIVISION, OKLAHOMA CORPORATION COMMISSION TO EXPLORE THE REQUIREMENTS OF SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996.	)	CAUSE NO. PUD 970000064

REPLY COMMENTS OF
COX COMMUNICATIONS OKLAHOMA CITY, INC.

COMES NOW, Cox Communications Oklahoma City, Inc., ("Cox") by its attorneys, and submits the following reply comments in the above-captioned cause. In general, Cox supports the initial comments filed in this cause by the Attorney General, Brooks Fiber Communications ("Brooks") and other prospective competitive local exchange carriers.

Cox recently received its certificate of public convenience and necessity from the Commission and intends to provide local exchange and exchange access services over its own facilities or predominantly over its own facilities to both residential and business customers in Oklahoma. Cox facilities currently pass over 95% of the residential households in Oklahoma City. Cox will be a facilities-based provider of local exchange telephone service and exchange access services and has requested access and interconnection with Southwestern Bell described in Section 271(c)(1)(A).

I. The Commission should recommend that

Southwestern Bell has not complied with Section 271

Section 271 of the Telecommunications Act of 1996[1] establishes the framework under which Southwestern Bell "may provide" interLATA services originating in Oklahoma. Clearly, the language of the federal Act is permissive and requires that Southwestern Bell take specific steps to open its local markets to competition prior to allowing the company to provide interLATA services. It is this Commission's responsibility under Section 271 to "verify compliance" with the competitive checklist and to consult with the FCC regarding Southwestern Bell's compliance or noncompliance with the federal Act.[2] For the reasons stated herein, Cox recommends that this Commission find that Southwestern Bell does not meet the requirements of Section 271(c) and that the Commission recommend the FCC deny Southwestern Bell's application for interLATA relief.

As discussed in more detail in the Attorney General's initial comments, subsection (c)(1) of the federal Act provides for two mutually exclusive bases for requesting interLATA authority. The language of the federal Act clearly provides that Southwestern Bell may request interLATA authority under subsection (c)(1)(B) if no facilities-based provider has requested access and interconnection within the three months prior to Southwestern Bell's filing of its application with the FCC. To date, Southwestern Bell has not made application to the FCC for interLATA authority and at least two facilities-based providers have requested interconnection - Brooks and Cox. Therefore, Southwestern Bell must rely solely on agreements made with such facilities-

[1] Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. §151 et seq.)
[2] Section 271(d)(2)(B) requires the FCC to "consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c)."

based providers, if any. To permit otherwise would eliminate the primary incentive for Southwestern Bell to reach an agreement with a facilities-based provider.

Southwestern Bell must allow actual interconnection of competitors' networks with its network which meets the requirements of Section 271(c) including the "competitive checklist". The language of the federal Act is unequivocal in this mandate and, in fact, expresses the requirement in at least two separate subsections:

> "(A) Presence Of A Facilities-Based Competitor - A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company ***is providing*** access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers. . ." (*emphasis added*) 47 U.S.C. §271(c)(1)(A).

and,

> "(A) Agreement Required - A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought-
>
> (i)(I) such company is ***providing*** access and interconnection pursuant to one or more agreements described in paragraph (1)(A), or
>
> (II) such company is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B), and

(ii) such access and interconnection meets the requirements of subparagraph (B) of this paragraph." (*emphasis added*) 47 U.S.C. §271(c)(2)(A).

Clearly, based on the language of the federal Act, Southwestern Bell's contention that it merely "hold out" access and interconnection to its competitors is misplaced. Southwestern Bell has received requests for interconnection from facilities-based competitors. Accordingly, the portions of the federal Act quoted above require actual provision of such interconnection to the facilities-based provider. However, to date, the company is actually providing interconnection to only one such provider - Brooks Fiber and by Brooks' own account, many of the elements contained in the company's interconnection agreement are not being provided to Brooks at this time. Therefore, the Commission should recommend to the FCC that Southwestern Bell fails to meet the requirements of the federal Act since it is not actually providing interconnection and access pursuant to its interconnection agreements as required by the federal Act.

II. The Commission Should Find That Southwestern Bell Has Not Met Congress' Competitive Checklist

Congress established a checklist of duties which must be fulfilled by a Bell operating company prior to that company being granted authority to provide interLATA services. For the following reasons, Southwestern Bell is not in compliance with the competitive checklist.

Initially, Southwestern Bell cannot comply with the first element of the competitive checklist. Section 271(c)(2)(B)(i) requires the Bell operating company to be providing interconnection in accordance with the requirements of Sections 251(c)(2) and

252(d)(1) of the federal Act. These sections of the federal Act require that interconnection be provided at just and reasonable rates based on the cost of providing the interconnection or network element. Further, the federal Act requires the state Commission to make a determination to that effect. To date there has been no determination by this Commission that Southwestern Bell's rates for interconnection contained in either its agreement with Brooks or its Statement of Generally Available Terms are just and reasonable nor that such rates are based on the appropriate cost determined by the Commission.

The rates contained in Southwestern Bell's agreement with Brooks were reached by agreement and were not approved by the Commission. Moreover, the rates contained in Southwestern Bell's Statement of Generally Available Terms are based on the rates approved by the Commission *on an interim basis pending completion of cost studies* in Southwestern Bell's arbitration with AT&T. Therefore, Southwestern Bell is *not* offering or providing access and interconnection at rates that have been determined to be just and reasonable by this Commission. The failure to provide cost-based rates that are just and reasonable alone should trigger this Commission's recommendation that Southwestern Bell has not complied with the competitive checklist.

Second, Southwestern Bell cannot comply with the ninth element of the competitive checklist. Section 271(c)(2)(B)(ix) requires Southwestern Bell to provide nondiscriminatory access to numbers for assignment to other carrier's telephone exchange service customers. Knowing that the assignment and routing information would take some time, Cox reserved ten NXX codes on January 7, 1997. On March 13, Cox was advised by Southwestern Bell that the codes which had been reserved could not